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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 PAUL WHITFORD and MEGAN
11 JAYNE WHITFORD,

12 Plaintiffs,

13 v.

14 MT. BAKER SKI AREA, INC., a
corporation organized under the laws of
the State of Washington,

15 Defendant.
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CASE NO. C11-00112RSM

ORDER DENYING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT
REGARDING REASONABLENESS
AND NECESSITY OF MEDICAL
TREATMENT AND EXPENSES

17 **I. INTRODUCTION**

18 Plaintiffs Paul and Megan Jayne Whitford filed this action seeking damages for
19 negligence, negligent infliction of emotional distress, and loss of consortium from defendant Mt.
20 Baker Ski Area, Inc. for the negligent operation of Chair No. 1 and the lack of a proper safety net
21 to prevent plaintiff Paul Whitford's fall and subsequent injury. Dkt. # 1. This matter is now
22 before the Court upon Plaintiffs' Motion for Partial Summary Judgment Regarding
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1 Reasonableness and Necessity of Medical Treatment and Expenses. Dkt. # 22. For the reasons
2 set forth below, the Plaintiffs' motion is DENIED.

3 **II. BACKGROUND**

4 The parties are familiar with the claims and allegations underlying this case, and the
5 Court summarizes them here only in brief. Defendant Mt. Baker Ski Area, Inc. ("Defendant") is
6 a Washington corporation that operates a ski area in Whatcom County, Washington. Plaintiffs
7 Paul Whitford and Megan Jayne Whitford ("Plaintiffs") are citizens of Coquitlam, British
8 Columbia, Canada. Defendant operates Chair No. 1 which is the subject of this case.

9 Plaintiff Paul Whitford was injured when he fell from the mid-station platform of Chair
10 No. 1 while trying to load onto the chair. (Dkt. # 1). As a result of the fall Mr. Whitford
11 sustained injuries to his left and back. (Dkt. # 22, 2:2-8). Plaintiffs submitted requests for
12 admission to Defendant asking that Defendant admit that certain medical expenses related to
13 treatment received by Mr. Whitford were reasonable and necessary. *Id.* at 2:17-19; (Dkt. # 23-1).
14 Defendant admitted that the expenses for Sunwood Medical Center, Royal Columbian Hospital,
15 and Trailside Physiotherapy were all reasonable and necessary. (Dkt. # 23-1, 4-5). But,
16 Defendant denied that the expenses for massage by Momentum Therapeutics of \$1,653.32 were
17 reasonable and necessary. *Id.* at 6:11-12. Plaintiffs did not include the expenses for chiropractic
18 services by Momentum Therapeutics of \$3,660.00 in their requests for admission; therefore,
19 Defendant neither admitted nor denied their reasonableness or necessity. *Id.*

20 Plaintiffs now move for partial summary judgment asking the Court to declare that all of
21 Mr. Whitford's related medical expenses were reasonable and necessary to treat his injuries,
22 including the chiropractic expenses. (Dkt. # 22). Plaintiffs also ask the Court to grant them
23 attorneys' fees for the preparation of their motion. *Id.*

1 Defendant responds that Plaintiffs failed to provide appropriate responses to Defendant's
2 discovery requests; therefore, Defendant asks the Court to exclude portions of Plaintiffs'
3 evidence and to deny Plaintiffs' motion for partial summary judgment. (Dkt. # 27, 11).
4 Defendant also seeks an award of attorneys' fees incurred as a result of responding to Plaintiffs'
5 motion. *Id.*

6 **III. ANALYSIS**

7 **A. Standard of Review**

8 Summary judgment is proper if the pleadings, discovery, affidavits, and disclosure
9 materials on file show that "there is no genuine dispute as to any material fact and [that] the
10 movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a) & (c); *Anderson v.*
11 *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A dispute is "genuine" if "a reasonable jury
12 could return a verdict for the nonmoving party" and a fact is "material" if it "might affect the
13 outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. In ruling on summary
14 judgment, a court does not weigh evidence to determine the truth of the matter, but only
15 "determine[s] whether there is a genuine issue for trial." *Id.* at 249.

16 The Court must view the evidence and draw all reasonable inferences in favor of the
17 nonmoving party. *Id.* at 255; *FDIC v. O'Melveny & Myers*, 969 F.2d 744, 747 (9th Cir. 1992),
18 *rev'd on other grounds*, 512 U.S. 79 (1994). However, to survive summary judgment the
19 nonmoving party must "make a sufficient showing on an essential element of her case with
20 respect to which she has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
21 (1986). Further, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's
22 position will be insufficient; there must be evidence on which the jury could reasonably find for
23 the plaintiff." *Anderson*, 477 U.S. at 252.

1 **B. Plaintiffs' Motion for Partial Summary Judgment Regarding Medical Expenses**

2 Plaintiffs ask the Court to find summary judgment declaring that the entirety of the
3 medical expenses incurred to treat Mr. Whitford's injuries are reasonable and necessary. (Dkt. #
4 22, 3:1-4). "A plaintiff in a negligence case may recover only the reasonable value of medical
5 services received, not the total value of all bills paid." *Patterson v. Horton*, 84 Wn. App. 531,
6 543, 929 P.2d 1124 (Wash. Ct. App. 1997). The plaintiff bears the burden of proving that the
7 medical costs were reasonable and necessary and "cannot rely solely on the medical records and
8 bills" to do so. *Id.* "Medical records and bills are relevant to prove past medical expenses only if
9 supported by additional evidence that the treatment and bills were both necessary and
10 reasonable." *Id.* "Proof of [medical expenses] need not be unreasonably exacting and may come
11 from any witness who evidences sufficient knowledge and experience respecting the type of
12 service rendered and the reasonable value thereof." *Kennedy v. Monroe*, 15 Wn. App. 39, 49, 547
13 P.2d 899 (Wash. Ct. App. 1976).

14 Plaintiff has brought forth evidence that the massage and chiropractic expenses were
15 reasonable and necessary via the declaration of Dr. Leah Stadelmann. (Dkt. # 23-2). However,
16 evidence that the expenses were reasonable and necessary does not shift the burden to Defendant
17 to prove that they were not. Rather, Plaintiff must show that no reasonable jury could find that
18 the amount of damages were unreasonable or unnecessary. *Anderson*, 477 U.S. at 252. This,
19 Plaintiff has failed to do.

20 Damages are a factual question. While it appears that certain medical expenses were
21 admitted by Defendant as reasonable and necessary, Defendant challenges Dr. Stadelmann's
22 credibility and opinion, asserting that the massage therapy was neither prescribed nor medically
23 necessary. (Dkt. # 23-1, 6:11-12). Trial courts should act with caution in granting summary
24 judgment. *Anderson*, 477 U.S. at 255. Here, Defendant raises a genuine issue of material fact by

1 disputing the necessity of both the massage and chiropractic treatments. Summary judgment is
2 DENIED. Likewise, Plaintiffs' motion for attorneys' fees is also DENIED.

3 **C. Defendant's Request to Exclude**

4 In light of the Court's denial of Plaintiffs' motion for summary judgment, Defendant's
5 request to exclude evidence is MOOT. Defendant's request for attorneys' fees is accordingly
6 DENIED.

7 **IV. CONCLUSION**

8 Having read the motion, response, and reply thereto, all declarations and attached
9 exhibits, and the remainder of the record, the Court hereby finds and ORDERS:

10 (1) Plaintiffs' Motion for Partial Summary Judgment regarding medical treatment and
11 expenses, (Dkt. # 22), is DENIED.

12 (2) The Clerk of the Court is directed to forward a copy of this Order to all counsel of
13 record.

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15 Dated this 15th day of March 2012.

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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
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